

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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DARRELL D. SMITH,

Case No. 24-CV-1551 (PJS/TNL)

Plaintiff,

v.

ORDER

B. EISCHEN, Warden,

Defendant.

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Darrell D. Smith, pro se.

Ana H. Voss and Kristen Elise Rau, UNITED STATES ATTORNEY'S OFFICE, for defendant.

This matter is before the Court on plaintiff Darrell Smith's objection to the September 12, 2024, Report and Recommendation ("R&R") of Magistrate Judge Tony N. Leung. Judge Leung recommends dismissing Smith's habeas petition for lack of jurisdiction.<sup>1</sup> The Court has conducted a de novo review. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). Based on that review, the Court overrules Smith's objection and adopts the R&R.

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<sup>1</sup>Smith also filed three motions, one [ECF No. 8] ostensibly in response to Judge Leung's order to show cause [ECF No. 6] for why the action should not be dismissed for lack of jurisdiction, a second [ECF No. 13] to present updated information, and a third [ECF No. 16] to append additional briefing to his objection to the R&R. Because nothing in these filings impacts the Court's jurisdiction analysis, the Court adopts the R&R's recommendation that the motion at ECF No. 6 be denied, and likewise denies the motions at ECF Nos. 13 and 16.

Only one matter merits comment. As explained in the R&R, the dismissal of Smith's habeas petition does not preclude him from pursuing his claims through an appropriate procedural vehicle, *see ECF No. 9 at 5*, such as a civil action that is not a habeas petition. *See, e.g.*, Response Brief re Petition for Writ of Habeas Corpus at 19 n.8, *Sharma v. Eischen*, No. 24-cv-2619 (JWB/DJF) (D. Minn. Aug. 28, 2024), ECF No. 14, *report and recommendation adopted in part*, 2024 WL 4190071 (D. Minn. Sept. 13, 2024). But Smith could pursue such a civil action only after exhausting his administrative remedies, and he would be responsible for paying the filing fee. *See ECF No. 9 at 5*; 42 U.S.C. § 1997e(1). Smith's civil action might ultimately be unsuccessful, but at least the Court to which that action is assigned, unlike this Court, would have jurisdiction to rule on the merits of Smith's claims.

#### ORDER

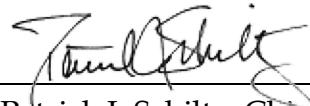
Based on the foregoing, and on all of the files, records, and proceedings herein, the Court OVERRULES defendant's objection [ECF No. 10] and ADOPTS the R&R [ECF No. 9]. IT IS HEREBY ORDERED THAT:

1. Plaintiff's petition for writ of habeas corpus [ECF No. 1] is DISMISSED WITHOUT PREJUDICE for lack of jurisdiction.
2. Plaintiff's motion for leave of court [ECF No. 8] to add to show cause is DENIED.

3. Plaintiff's motion for leave of court [ECF No. 13] to present updated information is DENIED.
4. Plaintiff's motion for leave of court [ECF No. 16] to append an attachment to his objection [ECF No. 10] is DENIED.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: November 13, 2024



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Patrick J. Schiltz, Chief Judge  
United States District Court